



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2011-0150; FRL-9916-37-OW]

Proposed Information Collection Request; Comment Request; Final National Pollutant Discharge Elimination System (NPDES) Small Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels Less than 79 Feet

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), “Final National Pollutant Discharge Elimination System (NPDES) Small Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels Less than 79 Feet” (EPA ICR No. 2504.01, OMB Control No. 2040-NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a request for approval of a new collection. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before [insert date 60 days after publication in the Federal Register].

ADDRESSES: Submit your comments, referencing Docket ID No. EPA-HQ-OW-2011-1050, online using www.regulations.gov (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave., NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without

change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Jack Faulk, Water Permits Division, Office of Water (4203M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: 202-564-0768; email address: faulk.jack@epa.gov.

SUPPLEMENTARY INFORMATION:

Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), EPA is soliciting comments and information to enable it to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be

submitted to OMB for review and approval. At that time, EPA will issue another Federal Register notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: In December 2003, a long-standing exclusion of discharges incidental to the normal operation of vessels from the NPDES program became the subject of a lawsuit in the U.S. District Court for the Northern District of California (*Northwest Env'tl. Advocates et al. v. United States EPA*, 2005 U.S. Dist. LEXIS 5373 (N.D. Cal. 2005)). The District Court issued a final order in September 2006 providing that the blanket exemption for discharges incidental to the normal operation of a vessel, contained in 40 CFR § 122.3(a), shall be vacated as of September 30, 2008. On July 23, 2008, the U.S. Ninth Circuit Court of Appeals upheld the District Court's decision. This meant that, effective December 19, 2008, except for those vessels exempted from NPDES permitting by congressional legislation, discharges incidental to the normal operation of vessels that were excluded from NPDES permitting by 40 CFR § 122.3(a) were subject to the Clean Water Act (CWA) section 301 prohibition against discharging, unless authorized by an NPDES permit.

In late July 2008, Congress enacted two pieces of legislation to exempt discharges incidental to the normal operation of certain types of vessels from the need to obtain an NPDES permit.

The first of these, entitled the Clean Boating Act of 2008, amends the CWA to provide that discharges incidental to the normal operation of recreational vessels are not subject to NPDES permitting, and instead, creates a new regulatory regime to be implemented by EPA and the U.S. Coast Guard under the new 312(o) of the CWA. S. 2766, Pub. L. 110-188 (July 29, 2008).

The second piece of legislation provided for a temporary moratorium on NPDES permitting for discharges, except for ballast water, subject to the 40 CFR § 122.3(a) exclusion

from (1) commercial fishing vessels (as defined in 46 U.S.C. § 2101 and regardless of size) and (2) from those other non-recreational vessels less than 79 feet in length. S. 3298, Pub. L/10-299 (July 31, 2008). The statute's NPDES permitting moratorium ran for a two-year period beginning on its July 31, 2008 enactment date, during which time EPA was to study the relevant discharges and submit a report to Congress. EPA finalized this Report to Congress, entitled "Study of Discharges Incidental to Normal Operation of Commercial Fishing Vessels and Other Non-Recreational Vessels Less Than 79 Feet" in August 2010 (EPA, 2010), a copy of which is available on EPA's website at <http://www.epa.gov/npdes/vessels>. The moratorium was subsequently extended to December 18, 2013 by P.L. 111-215 and further extended to December 18, 2014 by the Coast Guard and Maritime Transportation Act of 2012 (H.R. 2838) signed on December 20, 2012 (P.L. 112-213).

On December 8, 2011, EPA published the draft permit in the *Federal Register* and the Agency published the final Small Vessel General Permit (sVGP) also in today's *Federal Register* to ensure that NPDES permit coverage is available for those vessels currently excluded from permitting by that moratorium.

This ICR calculates the burden and costs associated with the NPDES program, identifies the types of activities regulated under the NPDES program, and describes the roles and responsibilities of the Agency associated with the sVGP.

Form Numbers: None.

Respondents/affected entities: Entities potentially affected by this action are owners/operators of commercial fishing vessels and non-recreational, non-military vessels less than 79 feet in length that are operating as a means of transportation with incidental discharges to waters of the United States.

Respondent's obligation to respond: required for owners/operators needing to obtain or retain the

benefit of permit coverage under the sVGP.

Estimated number of respondents: 137,739 (total).

Frequency of response: Once, annually as needed, quarterly.

Total estimated burden: 138,597 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: \$5,064,298 (per year), includes \$0 annualized capital or operation & maintenance costs.

Changes in Estimates: This is a new information collection.

Dated: August 29, 2014.

Sheila E. Frace,

Acting Director, Office of Wastewater Management.

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